IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Rajendra Kumar Pagariya
Vs.
Rajasthan State Cooperative Oil
Seeds Growers Federation Ltd. & Another

**(S.B. Civil Writ Petition No.1989/1993)**

DATE OF ORDER : December 04, 2007

P R E S E N T

**Hon'ble Mr. Justice Gopal Krishan Vyas**

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Mr. P.P. Choudhary for the petitioners.
Mr. Rajesh Joshi for the respondent.
Mr. S.N. Tiwari, Dy. G.A.

BY THE COURT :

By this writ petition, the petitioner has prayed for direction to the respondents to make applicable the old promotion policy qua the petitioner as per his option vide Annex.-P/10 and further to provide promotion to the petitioner as per the old promotion policy after completion of 5 years service in the pay-scale of Rs.1200-2050 with effect from 18.01.1989 with all consequential benefits.

The petitioner has further prayed that, without prejudice to the above claim, the respondents may be directed to provide selection grade to the petitioner after completion of 9 years of service in pay-scale No.9, with all consequential benefits.

According to facts mentioned in the writ petition, the petitioner was initial appointed on the post of Godown-cum-Weighman Clerk on 17.01.1984. A resolution was adopted on 23.04.1990 and the post held by the petitioner was re-designated as Procurement Assistant. In the writ petition, the petitioner's contention is that no consent was taken from him for changing the designation of the post held by him. Thereafter, vide another resolution passed on 17.11.1988, high-duty allowance was granted to Godown Keeper (Junior Assistant) Girdhari Lal. As per the petitioner, Godown Keepers were treated as Junior Assistant, therefore, said high-duty allowance was granted.

According to the petitioner, an order dated 15.05.1989 was issued whereby Junior Assistant/L.D.Cs. Were promoted in the pay-scale of Senior Assistant/U.D.Cs. This order was made on ad hoc basis and one Girdhari Lal was provided the said benefit of promotion though on ad hoc basis. According to the petitioner, the aforesaid two documents clearly speak that Godown Keepers were treated as Junior Assistants. On 12.04.1990, the respondents issued promotion-policy whereby it was provided that Junior Assistant is entitled for promotion to the post of Senior Assistant if he has completed 5 years of service

and incumbents who were possessed of the academic qualification of Graduation were held entitled to promotion after completion of 3 years experience. The petitioner made a representation on 08.01.1991 for providing him promotion to the post of U.D.C. From the post of L.D.C. as he had already completed 5 years of service and the post upon which the petitioner was appointed was equivalent to the post of L.D.C./Junior Assistant. According to the petitioner, he was eligible for promotion as per his qualification and experience to the post of Senior Assistant (U.D.C.). Vide communication dated 04.02.1991, the representation of the petitioner was forwarded and it was replied that his case would be considered after formation of the promotion policy.

The petitioner's contention in the writ petition is that the promotion policy of Rajfed was already made applicable and, time to time, promotions have been accorded in consonance with the said promotion policy, therefore, denial of right to consideration for promotion to the petitioner was illegal and he was to be given promotion in accordance with the promotion policy of Rajfed which was made applicable to the employees of the respondent Sangh.

According to the petitioner, in the recommendation letter dated 14.12.1991, the petitioner's representation was sent to the Managing Director of the Tilam Sangh and, in the recommendation letter Annex.-P/9, it was mentioned that the petitioner has 10 years' experience, therefore, he may be provided promotion to the next higher post as

his work is satisfactory. As the promotion-policy of Tilam Sangh was served on the president of the Tilam Sangh on 01.07.1992, the petitioner has made out his case that when the said policy was received by the president of the Tilam Sangh, he filed his option in accordance with para 5/18 within a period of one month for providing promotion on the basis of then existing rules of the Rajfed which were made applicable to the Tilam Sangh also.

It is mentioned in the writ petition by the petitioner that vide order dated 07.03.1992 issued by the respondents, the selection-grade was allowed to the employees of the subordinate staff who were holding isolated posts and fixation of pay in the selection scale was allowed as per the Government order dated 25.01.1992; meaning thereby, the order of the State Government for providing selection scale was accepted by the respondent establishment, therefore, those persons who were getting pay in the pay-scale No.6 of Rs.950-1680 were held entitled to selection grade of Rs.1200-2050, after completion of 9 years of service. The petitioner's case is that instead of granting selection grade to the petitioner after completion of 9 years of service from pay-scale No.6 to pay-scale No.9, the respondents have allowed the pay-scale of Rs.1025-1800 vide the impugned order dated 12.02.1993 (Annex.-P/12). In the aforesaid circumstances, it is mentioned in the writ petition that the petitioner was entitled to promotion in consonance with the promotion policy of the Rajfed which

was made applicable to the employees of the respondent establishment and he was to be given promotion after completion of 5 years of experience to the post of U.D.C. and, therefore, he made representation on 18.02.1993, however, no heed was given to the representation filed by the petitioner. Hence the petitioner preferred this writ petition seeking direction to the respondents, as noted above.

It is vehemently contended by learned counsel for the petitioner that denial of promotion to the post of U.D.C. in the pay-scale of 1200-2050 is arbitrary and illegal because the petitioner is entitled to be considered for promotion in accordance with the promotion policy made applicable to the respondent establishment. It is contended that the petitioner is entitled to be promoted from the post of Junior Assistant (L.D.C.) to the post of Senior Assistant (U.D.C.) in the pay-scale of Rs.1200-2050 and though he was eligible for promotion as such according to his experience, the petitioner was not extended this benefit. Similarly, the benefit of selection-grade was also not allowed to the petitioner though the Government order dated 25.01.1992 for providing selection scale was adopted by the respondent establishment vide order dated 07.03.1992. It is submitted that this benefit was also not allowed to the petitioner though he was appointed on 17.01.1984 and he completed 9 years of service on 17.01.1994. Therefore, denial of selection scale to the petitioner is also illegal. In these facts and circumstances, it is prayed by learned counsel for the

petitioner that the respondents may be directed to accord promotion to the petitioner on the post of U.D.C. as per the promotion policy of the Rajfed which was made applicable to the employees of the respondent establishment; and, similarly the respondents are under obligation to grant benefit of the selection scale, as aforesaid, to the petitioner after completion of 9 years of service.

Per contra, it is submitted by the opposite side that the writ petition deserves to be dismissed on the ground that various disputed questions of fact are involved in this case and, so also, the petitioner has deliberately concealed material facts. It is contended by learned counsel for the respondents that it is specifically pleaded in the writ petition by the petitioner that he has not given consent for upgradation under the existing cadre which he is presently having; but, as a matter of fact, he himself moved application for present upgradation and he gave his consent to accept the same which is evident from Annex.-R/1, R/2 and R/3, placed on record. It is disclosed by the respondents that the petitioner's option was accepted and he was designated as Procurement Assistant as per his option, therefore, the contention of the petitioner is misleading that he did not give consent for upgradation. Learned counsel for the respondents further argued that the petitioner himself has concealed the fact by saying that he is Junior Assistant whereas he is neither appointed as Junior Assistant nor he is working as Junior Assistant which is evident from his appointment

order dated 17.01.1984 whereby he was provided appointment on the post of Godown-cum-Weighman Clerk. Thereafter, on the request of the Union some amicable settlement was reached and his grade was enhanced from Rs.820-1500 to Rs.880-1680 and the designation was also changed from Godown-cum-Weighman Clerk to Procurement Assistant. This was done on the option given by the petitioner. It is argued by learned counsel for the respondents that the petitioner was never appointed as Junior Assistant and, therefore, there is no foundation for his claim for promotion to the post of Senior Assistant. It is contended that the petitioner has tried to confuse this Court that the post upon which he is working is equivalent to the post of Junior Assistant, therefore, his claim for promotion to the post of Senior Assistant is required to be considered. According to the respondents, the petitioner has raised fallacious claim and tried to mislead this Court on facts by raising false plea that his post is equivalent to the post of Junior Assistant. The post of Godown Keeper cannot be equated at par with the post of Junior Assistant and, as per his option, the post held by him was re-designated as Procurement Assistant while allowing enhanced pay-scale of Rs.880-1680.

It is further submitted by learned counsel for the respondents that the petitioner has already been granted selection grade but he is claiming selection grade in the pay-scale of Rs.1200-2050 for which he is not entitled. He has been granted the benefit of selection grade as

per the post held by him. It is prayed on behalf of the respondents that the petitioner has concealed true facts and raised a false claim which cannot be granted in accordance with law, therefore, the writ petition deserves to be dismissed.

I have considered the rival submissions and carefully perused the material on record.

Upon perusal of the appointment order of the petition which is Annex.-P/1, it is clear that the petitioner was appointed as Godown-cum-Weighman Clerk, therefore, by way of filing certain documents the petitioner has tried to satisfy the Court that the said post is equivalent to the post of Junior Assistant (L.D.C.) but, in fact, this contention is not correct. Though, in the writ petition, at para 3, it is specifically pleaded by the petitioner that the post of Godown-cum-Weighman Clerk was re-designated as Procurement Assistant but no consent was taken from him for changing the designation; but, according to the document Annex.-R/1, it is clear that option was given by the petitioner for changing the nomenclature of the post upon which he was appointed and upon the said option the post held by him was re-designated as Procurement Assistant. It is also evident from document Annex.-R/2 that the post of Godown-cum-Weighman Clerk was upgraded and the petitioner was allowed pay-scale of Rs.880-1680 and, vide Annex.-R/3, the said pay-scale was accepted by the petitioner. Therefore, obviously prior to passing the resolution for

changing the nomenclature of the post the pay-scale was enhanced and thereafter the designation was changed to Procurement Assistant.

Admittedly, in this case, the petitioner is claiming the right to consideration for promotion on the post of Senior Assistant (U.D.C.) on the pretext that the post held by him is equivalent to the post of Junior Assistant. However, the respondents have disputed these facts and contended that the post held by the petitioner was never equated at par with the post of Junior Assistant (L.D.C.). In my opinion, without any documentary evidence or otherwise proof of any decision taken by the respondent establishment for treating the post of Procurement Assistant as equivalent to the post of Junior Assistant, it cannot be said that the both the posts are equivalent and, therefore, the petitioner has a right to be considered for promotion to the post of Senior Assistant alongwith the Junior Assistants. Therefore, upon these facts, it can only be said that the petitioner can claim promotion in the cadre in which he was appointed and no direction can be given by this Court in the present writ petition to the respondents to treat the post held by the petitioner as equivalent to the post of Junior Assistant and to provide further promotion to the higher post unless any decision or rules/regulations are produced before the Court for providing the same. In these facts and circumstances, the claim of the petitioner for promotion to the post of Senior Assistant while treating him as Junior Assistant is totally unfounded. The petitioner is entitled to get the

benefit of promotion to a higher post in his cadre in which he was appointed. It may, however, be made clear that the respondents are required to consider the case of the petitioner for promotion in accordance with the promotion policy as per his designation and cadre.

With regard to the selection scale, it is evident from Annex.-P/11 dated 07.03.1992 that the Government order dated 25.01.1992 was adopted by the respondent establishment, therefore, obviously if the selection scale provided by the Government under the order dated 25.01.1992 to the government employees is made applicable in the respondent establishment, then, the petitioner is also entitled to get the benefit of selection scale as per the order dated 25.01.1992. In para 14, it is accepted by the petitioner that he was granted selection grade in the pay-scale of Rs.1085-1800 vide order dated 12.02.1993 (Annex.-P/12); but, in fact, upon perusal of said order dated 12.02.1993, it is revealed that as per office order dated 08.06.1992, as per the organizational re-structure and promotion policy, his case was recommended by the Departmental Promotion Committee and he was allowed pay-scale of Rs.1025-1800. If it is so, then, there is no question of granting selection scale to the petitioner after completion of 9 years of service because he was appointed initially on 17.01.1984 and, after 9 years, he has been granted benefit of pay-scale of higher post, therefore, in my opinion, the selection scale which is provided for the employees after completion of 9, 18 and 27 years of service in the

event of the incumbent not having been promoted to the higher post is not available to the petitioner because the petitioner has already been considered for promotion and he has been allowed pay-scale of Rs.1025-1800.

In the aforesaid circumstances, it is appropriate that the petitioner may file detailed representation before the respondents within a period of one month for grant of promotion or selection-scale to him. Upon submission of such representation, the respondents are directed to decide the representation of the petitioner for grant of promotion or selection-scale in accordance with law within two months thereafter. It is made clear that in this writ petition the petitioner has failed to establish equivalence of his post to the post of Junior Assistant, therefore, while rejecting the prayer of the petitioner to treat his post equivalent to the post of Junior Assistant, it is left open to the respondents to take their own decision in the matter as provided in the departmental rules.

With aforesaid direction/observation, the writ petition is disposed of.

**(Gopal Krishan Vyas) J.**